

# Report of the Strategic Director: Place to the meeting of Executive to be held on 5 October 2021

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## Subject:

Blight site - Land North East of Draughton Grove, BD5 Wibsey.

## Summary statement:

This report will inform the Executive on issues, actions and solutions related to a nuisance area of land where the owners cannot be traced.

## EQUALITY & DIVERSITY:

Equality assessments - The proposal will advance equality of opportunity and foster good relations in an area of deprivation (in top 10% most deprived areas in UK, IMD) by positively impacting on the health and wellbeing of residents including children and helping restore pride to the area, by creating a safer, cleaner environment. The high levels of need and low incomes in the area mean that residents are disproportionately affected by living in environmental degradation and being less able to leave the area.

Equality objectives - The development of the land will not just remove a hazard, it will create a new opportunity which would give residents chance to exercise or learn new skills e.g. food growing, as an amenity space or to provide much needed housing accommodation.

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## 1. SUMMARY

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Portfolio: REGENERATION, PLANNING AND  
TRANSPORT

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Overview & Scrutiny Area:  
Corporate

- 1.1 This report provides the Executive with information on land lying to the north east of Draughton Grove, Little Horton, Bradford ("Land") which has been a nuisance to residents and a significant cost to the Council in terms of cleaning up fly tipped waste. This has been an issue for more than 9 years.
- 1.2 This report is seeking Executive Approval for the Council to use its Compulsory Purchase Order (CPO) powers to acquire the Land, as it has not proved possible to trace the owners of the Land despite diligent and reasonable enquiries. Following the CPO, a scheme to create a public amenity/community allotment site working with local partners will be delivered or the land will be used for housing development.

## **2. BACKGROUND**

- 2.1 The Land has been the subject of complaint for many years to Ward Councillors and the Council. The current Environmental Enforcement system started in 2012 and since this date recorded complaints are summarised in Appendix A.
- 2.2 Of the nine incidents on this system since 2012, the Council has had to remove the waste seven times, setting charges as appropriate against the Land, in the absence of being able to locate the landowners. Legal powers used include the Environmental Protection Act Section 59 notice, Prevention of Damage by Pests Act Section 4 and Community Protection warnings and notices. Whilst the use of enforcement powers provides a mechanism to clear rubbish it has not prevented nor discouraged repeated fly tipping, which can only be effectively stopped by the Council gaining control and securing the land against unauthorised access.
- 2.3 The Land is registered at HM Land Registry but despite exhaustive and diligent enquiries involving the engagement of specialist tracing agents, it has still not proved possible to locate the whereabouts of the registered owners. As there is little or no prospect of the landowners being located, there is no alternative other than to seek to rely on the use of CPO powers as a precautionary measure to acquire the Land, although enquires will continue to be made in the hope that the landowners will be found and are willing to either take remedial steps to ensure that the Land can no longer be used for fly tipping or are prepared to dispose of the Land to the Council.
- 2.4 This Land is just one of a number of neglected sites in the immediate area which suffers regular fly tipping. Neighbourhood Service staff have worked over a number of years with Incommunities, the main landlord in the area - and other local partners to try to reduce fly tipping. It has been a challenge on this particular site, as it is the only one where no contact with the landowners has been established
- 2.5 The Council has been very proactive in the area trying to prevent fly tipping. This includes regular walkabouts with partners, speaking to local residents about Council waste disposal services and penalties for fly tipping, community clean ups, door knocks, visits by Council recycling advisers and refuse team etc. However, with a frequent turnover of residents in the area, the change has been negligible.
- 2.6 Street Cleansing teams frequently remove rubbish spilling over from the site onto the unadopted back street running alongside the site.
- 2.7 Comments from local residents on the land are contained in Appendix B.

- 2.8 The Land is not allocated in the Council's development plan nor emerging Local Plan.
- 2.9 If the Land is acquired, it is intended to use funding from the budget allocation for finding solutions to persistent fly tipping sites, in order to install robust fencing and gates to prevent future fly tipping in anticipation of the Land being put to productive use in the future.

### **3. OTHER CONSIDERATIONS**

- 3.1 Enforcement action has been taken against the owners of other land near to site, which has resulted in some improvements but as indicated this is not proving possible and the situation will, it is felt, worsen the longer the Land is left unprotected.
- 3.2 The Land is a significant size (measuring approximately 414 square metres) in a neighbourhood where green space is in short supply. The poor condition of this derelict Land is creating a health hazard and having a detrimental impact on the surrounding environment and quality of life of local residents.
- 3.3 The Council has already successfully worked with a local organisation to develop a public amenity at a nearby site on Rathmell Street\Faxfleet Street. Marshfield Odsal Bankfoot Enterprise has leased this site from the Council and attracted funding to set up a community space, including a food growing area and play area for children. This project known as "Hope Park" offers the model that local partners would seek to follow to bring the Land back into beneficial community use and will add to the work being done to develop a more resilient community, which has included community events in summer and at Christmas, regular advice at "drop-in" places and a new "pop up" pantry at St Matthew's Church.
- 3.4 According to the "Index of Multiple Deprivation", this part of Wibsey Ward falls within the 10% most deprived areas of the Country, with high levels of need including poverty, low incomes, high crime, poor environment and poor health.
- 3.5 Legal Services has confirmed that the Council has the necessary legal powers to promote a CPO to enable the Land to be acquired for either of the purposes intended.

### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 The recommendations detailed within this Report have a number of financial, risk and resource implications.
- 4.2 Putting the Land in a CPO would enable the Council to work with partners in attracting funding to reclaim the land with a view to the land being leased to a local voluntary group to develop it further for community use or to the use the land for housing development.
- 4.3 The proposed future use would mean the Council would no longer be called upon to fund the clearance of noxious and hazardous waste dumped on the land.
- 4.4 Protecting the land from fly tipping in the short term would mean clearing the

rubbish from the site and erecting a weldmesh fence and gate along the frontage, at an estimated cost of £6,900. Resources have been found within the Neighbourhood Service to cover this.

4.5 The Land has been valued at £3,600.00 if it is to be used as an amenity space/community allotment site. In addition, other statutory compensation would be payable amounting to a further £6,400.00, bringing the total estimated compensation payable to circa £10,000.00.

4.6 Legal costs so far are £1,012.50. The minimum future legal costs are estimated to be £1,575 subject to there being no objections to the CPO, however if it is contested, the legal costs could be much higher depending on the time taken.

## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

5.1 Should a person with an interest in the land come forward within 6 years, the Council will be liable for compensation as outlined in 4.5 above. The compensation available to those whose land, or interest in land, has been acquired by CPO may, depending on the facts of each case, be made up of the following three main elements:

- The open market value of the land taken.
- Any loss caused by losing possession of the land ("disturbance").
- Compensation for damage to any land that is retained by the affected party caused by the exercise of the compulsory purchase powers of the acquiring authority or for loss of value of the retained land caused by the acquiring authority's scheme ("injurious affection" and "severance" respectively).

5.2 The suitability of the land for housing development and associated costs are continuing to be assessed and will be reported to the Executive meeting.

5.3 It is envisaged that if the CPO is confirmed, the Council will use compulsory purchase powers to simultaneously vest title of the land in the Council and enable the Council to enter the land and take physical possession. The Council would then be free to secure the land and develop the land without any interference and without having to rely on the payment of compensation. It would then be for any person entitled to claim compensation to do so within a period of six years from the date that the land vested in the Council. In the circumstances, there is every likelihood of nobody coming forward to claim compensation before being time barred.

5.4 The risks attached to leasing the land for community use of housing development through a third party will be managed through negotiated terms set out in the lease.

5.5 The alternative to not using CPO powers to acquire the land would leave the Council with having to continue to fund the clearance of dumped waste with no prospect of reclaiming the cost, along with all the associated costs of officer time alongside the continuing nuisance created for residents and users of the neighbouring back streets.

5.6 Partners working in the Bankfoot area have been kept informed and consulted about environmental work in the area and specifically about progress with this land

and are supportive of action being taken to improve the land. Ward councillors are also central in this and have been keen to find a solution for a number of years.

## **LEGAL APPRAISAL**

### **6.1 Compulsory Purchase Power**

This report considers the consequences and justification of proceeding to authorise the use of compulsory purchase powers to facilitate a proposed reclamation scheme to tidy and bring back the land into beneficial use and which is situated north east of Draughton Grove, Little Horton, Bradford shown edged red on the plan annexed to this Report. (Appendix C)

The objective of the scheme is to ensure that the Council has the ability to acquire the land through the use of compulsory purchase powers as a last resort, should further enquiries fail to identify and locate the persons who are shown at HM Land Registry to have a freehold interest in the land and whose whereabouts continue to be unknown, despite exhaustive investigations including those carried out by specialist “tracing” agents.

As the land is and has been derelict, neglected and unsightly for a significant and unacceptable period of time, it is proposed to rely on the power contained under Section 89 of the National Parks and Access to the Countryside Act 1949 to acquire the land, in order to facilitate the proper future control and management of the land to provide an amenity public recreational space.

Housing powers pursuant to Section 17(1) of the Housing Act 1980 would be relied upon to acquire the land for housing development.

### **6.2 Compulsory Purchase Guidance**

In consideration of the potential use of compulsory purchase powers to support voluntary negotiations to acquire the land, reliance has been placed on government guidance entitled “Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion” published in July 2019. Weight must be given to the guidance to ensure that the proper compulsory procedures are followed, that the process is open and transparent and that nobody with a purported interest in the land is prejudiced.

### **6.3 The rights of the individual**

An important part of the compulsory purchase process is the need to ensure that the rights of the individual are recognised and taken into account by complying with the following human and equality rights –

### **6.4 Human Rights**

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the “European Convention on Human Rights”. Various Convention rights are likely to be relevant to the proposed Compulsory Purchase

Order (CPO), including –

**Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (Convention Article 6) - this includes property rights and can include opportunities to be heard in the consultation process.

**Rights to respect for private and family life and home** (Convention Article 8) - Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest.

**Peaceful enjoyment of possessions** (First Protocol Article 1) - This right includes the right to peaceful enjoyment of property and is subject to the Council's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

**Right to life** - in respect of which the likely health impacts of the proposals will need to be taken into account in evaluating the scheme (Convention Article 2).

The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's compulsory purchase powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate. If compulsory purchase powers are required, project officers are of the view that in pursuing a CPO, careful consideration has been given to the balance to be struck between individual rights and the wider public interest. Any interference with Convention rights is considered to be justified in order to secure the economic, social, physical and environmental regeneration that the redevelopment scheme will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compulsory purchase national compensation code.

The Council therefore believe that the scheme is in the public interest and that this outweighs any harm that may be caused by the use of compulsory purchase powers to acquire and interfere with third party land and rights needed for the scheme and that any interference with any human rights protected by the Human Rights Act 1998 and the "European Convention on Human Rights" is considered to be justifiable in order to secure the benefits to be derived from the scheme.

## 6.5 Public Sector Equality Statement

In addition to the human rights legislation and requirements, project officers in formulating and promoting a CPO have so far and at this stage, also had regard to the Council's statutory duties and obligations under the Equality Act 2010 and in particular, to the Council's obligations under Sections 149 and 150 of the said Act, by taking into account the differential impact a CPO might have on various groups of persons with protected characteristics. As a result, project officers are satisfied that no negative impact upon any protected social groups has been identified.

Moreover, the scheme aims to maximise public awareness, openness and transparency by being fully DDA compliant and dementia friendly and to consult and

engage with all relevant stakeholders and groups throughout the CPO process.

## 6.6 **Compulsory Purchase Order – Justification**

As this is the first time that the Executive has been invited to consider the making of a CPO, the Executive must be satisfied prior to authorising the making of a CPO, that there is sufficient justification to make a CPO and to demonstrate that the Council has exercised due diligence and probity and has been open and transparent in formulating its scheme proposals and in contacting and opening negotiations with interested parties to acquire the land needed.

Of paramount importance is for the Council to be satisfied that the following requirements have or are reasonably likely to be met, prior to a decision being taken to make a CPO –

that it is apparent from negotiations already undertaken, that there is little or no prospect of the land needed being acquired by voluntary means;

that sufficient funding is or is likely to be available;

that there are no planning obstacles to the implementation and completion of the scheme;

that the scheme is economically viable (i.e. funding of the scheme represents “value for money”);

that there are sufficient resources available to implement and complete the scheme within a reasonable timeframe;

that the scheme will achieve the object of enabling the land to be preserved and maintained;

that the compulsory purchase process is open and transparent;

that due regard has and is being given during the compulsory purchase process to the rights of the individual under human rights and equality impact legislation; and that there is a compelling case for the scheme in the public interest.

## 6.7 **Expert Advice**

It is not considered that any external specialised procedural expert advice is needed at this stage of the compulsory purchase process, although it might be necessary to instruct Counsel should a local public Inquiry be held to consider objections if a CPO is made and published.

## 6.8 **Options**

Unless action is taken now to make a CPO to support whatever scheme is promoted, valuable time will be lost. By making a CPO at this stage, it demonstrates that that the Council is serious in its intentions to acquire the land for improvement

and which in turn, might encourage those who own the land to come forward and enter into meaningful negotiations.

### **In essence –**

The Council can either make a CPO in accordance with the recommendations below whilst continuing to explore whether the land can be acquired by voluntary means and if not, to use compulsory purchase powers as a last resort or

Not authorise a CPO to be made to acquire the land which will inevitably lead to the condition of the derelict land becoming a worse health hazard and injurious to the welfare and well-being of local residents and the wider community and leaving the Council to use and pay for enforcement powers to clear the land of debris from fly tipping.

As a result, the Executive is strongly invited to authorise a CPO to be made in accordance with the recommendations below.

## **7. OTHER IMPLICATIONS**

### **7.1 Referred to in paragraph 6 above.**

### **7.2 SUSTAINABILITY IMPLICATIONS**

The Council will no longer need to fund regular waste removal from this land and instead it will become a valued green space or food growing area.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

Reducing the amount of hazardous rubbish dumped and replacing this with a public amenity site which aims to include food growing for local residents will support the reduction of greenhouse gas emissions.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

The prevention of fly tipping on the land will improve community safety for local residents and help restore pride to the area.

### **7.5 HUMAN RIGHTS ACT**

Referred to in paragraph 6 above.

### **7.6 TRADE UNION**

NA.

### **7.7 WARD IMPLICATIONS**

Ward Councillors are supportive of the recommended action and have been involved in seeking a solution for many years

## **7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS**

Bringing the land back into beneficial use supports actions in the Wibsey Ward Plan aiming to improve neighbourhoods by improving land use and deterring fly tipping

## **8. NOT FOR PUBLICATION DOCUMENTS**

NA

## **9. OPTIONS**

Referred to in paragraph 6 above.

## **10 RECOMMENDATIONS**

That the Executive approves the following recommendations –

10.1 That the Executive is satisfied that the condition of the land needs to be improved to prevent further deterioration and that the future use of the land for either a proposed reclamation scheme to provide an amenity space/community allotment site or for housing development is in the public interest and that any harm caused by the use of compulsory purchase powers to acquire and interfere with third party land and rights needed for the scheme is outweighed by the public benefits which the scheme will generate, having also taken into account at this stage, the statutory obligations under the Equality Act 2010 in relation to the differential impact a Compulsory Purchase Order might have on various groups of persons with protected different characteristics and human rights legislation.

10.2 To authorise a Compulsory Purchase Order to be made pursuant to Section 89 of the National Parks and Access to the Countryside Act ) 1990 for the use of the land as an amenity space/community allotment site or under Section 17(1) of the Housing Act 1980 for use of the land for housing development, including Section 1 of the Localism Act 2011 and the Acquisition of Land Act 1981 and all other relevant and enabling powers to secure the compulsory acquisition of the derelict, neglected and unsightly land situate to the north east of Draughton Grove, Little Horton, Bradford, shown edged red on the plan appended hereto as Appendix C.

10.3 To delegate to the Strategic Director: Place authority to –

10.3.1 decide on the most appropriate future use of the land in consultation with the Portfolio Holder and taking soundings from Ward Members

10.3.2 make, any necessary, minor or technical amendments to the Compulsory Purchase Order;

10.3.3 settle the “Statement of Reasons” to accompany the Compulsory Purchase Order”, to justify the use of compulsory purchase powers,

10.3.4 prepare the Compulsory Purchase Order Map and Schedule and all other legal documentation necessary to support and accompany the Compulsory Purchase Order to the appropriate Secretary of State for confirmation;

10.3.5 approve any agreements with landowners setting out the terms for withdrawal of any objections to the Compulsory Purchase Order;

10.3.6 confirm the Compulsory Purchase Order, if satisfied that it is appropriate to do so, in the event that the relevant Secretary of State notifies the Council that the Council has been given the power to confirm the Compulsory Purchase Order;

10.3.7 promote any modifications to the Compulsory Purchase Order, if expedient to do so;

10.3.8 take all and any necessary action, as the case may be to promote the Compulsory Purchase Order and to continue or open negotiations as the case may be for the acquisition of the land included in the Compulsory Purchase Order and any other land needed for the reclamation scheme and to authorise acquisitions by agreement where the use of compulsory purchase powers is in contemplation and to approve the purchase price, advance payments and all other compensation payments;

10.3.9 take all necessary steps in relation to any statutory blight proceedings instituted against the Council for the acquisition of the land claimed to be blighted by the threat or presence of the Compulsory Purchase Order;

10.3.10 take all necessary action, should the quantum of compensation flowing from the threat or use of compulsory purchase powers be in dispute and be referred to the Upper Tribunal (Lands Chamber) or other form of arbitration; and

10.3.11 take and do all other things necessary to promote or as the case may be to withdraw the Compulsory Purchase Order or incidental to the implementation of the above recommendations.

10.4 That all land acquired for the reclamation scheme be held for recreational or housing purposes, as the case may be.

## **11. APPENDICES**

Appendix A – Complaints as to the condition of the Land

Appendix B – Comments by local residents

Appendix C – Plan of the Land to be acquired.